2013 IL App (2d) 120147-U
No. 2-12-0147
Order filed December 20, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 08-CF-3680
NATHANIEL P. WISE,	)	Honorable Christopher R. Stride,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to 47 years' imprisonment (on a 35-75 range) for first-degree murder: the court was entitled to credit the evidence that defendant was more involved in the offense than he maintained, and the evidence of his rehabilitative potential, which the court considered, was not strong enough to require a sentence reduction.

¶ 2 Defendant, Nathaniel P. Wise, appeals his 47-year prison sentence for first-degree murder (720 ILCS 5/9-1(a)(1) (West 2008)), contending that it was excessive in light of his minimal role in the offense and because the trial court failed to properly consider his rehabilitative potential.

Because defendant's role in the offense was not minimal and the trial court properly considered his rehabilitative potential, the sentence was not an abuse of discretion, and we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted in the circuit court of Lake County on one count of first-degree murder with intent to kill (720 ILCS 5/9-1(a)(1) (West 2008)), one count of first-degree murder with knowledge that the acts would cause death (720 ILCS 5/9-1(a)(1) (West 2008)), one count of first-degree murder with knowledge that the acts created a strong probability of death or great bodily harm (720 ILCS 5/9-1(a)(2) (West 2008)), one count of first-degree murder during a forcible felony (robbery) (720 ILCS 5/9-1(a)(3) (West 2008)), and one count of first-degree murder during a forcible felony (burglary) (720 ILCS 5/9-1(a)(3) (West 2008)).

¶ 5 The evidence at defendant's jury trial established that defendant and his four codefendants planned to rob the victim, Bernard Phillips, who had sold one of them drugs, of his drugs and money. Defendant, along with two of his codefendants, carried a handgun. The five went to the house where the victim resided with his girlfriend and her children. They arrived around 4:30 a.m. and broke into the home.

¶ 6 Unfortunately, the robbery went awry, and the victim was shot and killed. According to the victim's girlfriend, there were five perpetrators in the house during the incident. She conceded that she originally told the police that there were only four men in the house, but she explained that she did so, because, when she gave the statement, she felt like she was in a dream.

¶ 7 In his statement to police, defendant admitted to acting as a lookout, but he denied entering the home. Two of his codefendants testified that defendant in fact entered the home and brandished a firearm. The two both admitted to having lied to the police and others about the incident, including

their earlier denials that defendant was present in the house. They also testified that, although they had been charged with first-degree murder, they were allowed to plead guilty to home invasion in exchange for their testimony.

¶ 8 Defendant, who did not testify, was found guilty of all five counts of first-degree murder. He was sentenced on the conviction on count I, the other four convictions having been merged.

¶ 9 At the sentencing hearing, the victim's girlfriend and his sister read their victim impact statements. Defendant offered no evidence, but gave a statement in allocution. His entire allocution consisted of his saying that "[t]he only thing I got to say is, you know, I am sorry what happened to Mr. Phillips or his family, you know. That is basically it, you know, what they got to go through. That's basically it."

¶ 10 Defendant argued that he should receive the minimum sentence of 35 years in prison, in part because, based on his statement to the police, "his role in the whole thing was supposed to be a lookout." In that regard, defendant asserted that his two codefendants' testimony was not credible, because they were motivated to lie about his involvement to obtain a better sentence for themselves and because they had admitted to lying earlier in the case. Thus, defendant contended that the court should rely only on his statement and find that he was merely a lookout.

¶ 11 Alternatively, defendant argued that, if the trial court considered his codefendants' testimony, then he was only "minimally involved in everything" and the most he "might have done in regards to a firearm was just hold it on an individual, point it at somebody to try to get them to stay in the kitchen." He further pointed to the lack of evidence that he was the shooter. Defendant urged the court to impose the minimum sentence, because of his "lack of involvement in this case" and because "of basically a criminal history of a majority of property crimes."

¶ 12 In imposing sentence, the trial court stated that it considered the statutory aggravating and mitigating factors. As to aggravation, the court emphasized the impact on the victims, defendant's criminal history, and the need to deter others. In terms of mitigation, the court pointed to defendant's allocution that he was sorry, defendant's rehabilitative potential, the impact of incarceration on defendant's children, and defendant's prior criminal history of having been only a "thief." The court stated that it considered the presentence investigation report, which included several social investigation reports pertaining to defendant's prior juvenile adjudications. The court found the testimony of the two codefendants, as to defendant's involvement in the crime, to be credible. The court sentenced defendant to 47 years' imprisonment. Following the trial court's denial of his motion to reconsider the sentence, defendant filed this timely appeal.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant contends that his 47-year prison sentence is excessive given his minimal participation in the offense and the trial court's failure to properly consider his rehabilitative potential. In that latter regard, he argues that the court did not give adequate mitigating weight to his essentially nonviolent criminal history, his expression of remorse at sentencing, his history of learning disabilities, and his having obtained his GED during his pretrial detention. Thus, he requests that this court reduce his sentence pursuant to Illinois Supreme Court Rule 615(b)(4) (eff. Aug. 27, 1999).

¶ 15 Although Rule 615(b)(4) gives a reviewing court the power to reduce a sentence, that power should be used carefully and sparingly. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). Trial courts have broad discretion in sentencing, and a sentence that falls within the statutory range may not be disturbed on appeal absent an abuse of discretion. *Id.* Such an abuse of discretion occurs

when the sentence is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Id.*

¶ 16 In the present case, defendant's sentence fell within the applicable statutory range of 35 to 75 years in prison. See 730 ILCS 5/5-8-1(a)(1)(d)(i) (West 2008). Thus, we give the trial court's sentencing decision great deference in considering whether it was an abuse of discretion. See *People v. Null*, 2013 IL App (2d) 110189, ¶ 55.

¶ 17 All sentences should reflect the seriousness of the crime and the objective of returning the offender to useful citizenship. *Null*, 2013 IL App (2d) 110189, ¶ 56. Careful consideration must be given to all mitigating and aggravating factors, including the defendant's age, demeanor, habits, and mentality, along with the need for deterrence and the potential for rehabilitation. *Id.* Even though this court might weigh the sentencing factors different from the trial court, that does not warrant altering the sentence. *Id.*

¶ 18 We turn first to defendant's contention that his minimal role in the offense warranted a lesser sentence. In so arguing, he maintains that his codefendants' testimony that he was in the house and displayed a gun should have been given little, if any, weight. He also points to his own statement to the police that he merely stood watch outside the home during the incident.

¶ 19 The trial court was in the best position to assess the credibility of the codefendants and to weigh the evidence presented at sentencing. See *People v. Jones*, 168 Ill. 2d 367, 373 (1995). The trial court was entitled to find the testimony of the codefendants credible. Their testimony established that defendant was in the house and used a gun during the offense. Although the two witnesses testified as part of a plea agreement, and admitted to lying about the incident before trial,

that alone did not make their testimony incredible. Thus, the trial court's finding that defendant was more involved in the incident than defendant contended was supported by the evidence.

¶ 20 Having said that, however, even if defendant's conduct was limited to being a lookout during the incident, we do not agree with defendant's characterization of that involvement as "minimal." The evidence established that defendant went to the house knowing that his codefendants were armed and intended to break in and rob the victim of his drugs and money. Defendant reasonably should have expected that deadly violence might ensue. This is especially so as drug dealers, such as the victim, are known to be armed and dangerous. See *United States v. Koerth*, 312 F.3d 862, 870 (7th Cir. 2002). Further, defendant's role as a lookout was critical to the criminal endeavor, considering that the house was located in a residential area, it was 4:30 in the morning, and all of the other participants were in the house. Therefore, even if we accept defendant's version of his role in the offense, his involvement was not as minimal as he contends and does not justify any reduction in his sentence.

¶ 21 We next address defendant's argument that the trial court did not properly consider his rehabilitative potential. To be consistent with the spirit and purpose of the law, a sentence must adequately reflect the rehabilitative potential of the defendant. *People v. Treadway*, 138 Ill. App. 3d 899, 904 (1985). Rehabilitative potential, however, is not entitled to greater weight than the seriousness of the crime and the need to protect the public. *People v. Cord*, 239 Ill. App. 3d 960, 968 (1993).

¶ 22 In our case, defendant relies on several facts that he contends show his rehabilitative potential. He points to his lack of a violent criminal history, his expression of remorse at sentencing, his learning challenges as a youth and adult, and his having obtained his GED despite his learning

disabilities. He argues that the trial court failed to adequately weigh those facts in formulating his sentence.

¶ 23 Although we agree that the bulk of defendant's criminal history consisted of property-related crimes, he was convicted as an adult of burglary, a forcible felony (see 720 ILCS 5/2-8 (West 2008)), and aggravated battery. Thus, his criminal history was not "essentially" nonviolent as he portrays it. Moreover, it was extensive and became progressively more serious, beginning as a juvenile and continuing until his arrest in this case. As the trial court noted, the only time he was not committing crimes was when he was incarcerated. Defendant's criminal history reflects a diminished likelihood of rehabilitation outside of the prison context. It certainly does not justify a reduction in his sentence on appeal.

¶ 24 As for his expression of remorse, it can best be described as minimal and perfunctory. Although the trial court was in the best position to assess defendant's demeanor and sincerity when he allocuted, the cold record indicates that defendant's statement consisted of three short sentences, including the terse statement that he was "sorry for what happened to Mr. Phillips or his family, you know." Such an apology is not the type of sincere expression of remorse sufficient to cause a court of review to significantly lower a defendant's sentence. Thus, we decline to reduce defendant's sentence.

¶ 25 Defendant emphasizes that he suffered from learning disabilities from an early age and never learned to read and write well. He contends that the trial court did not adequately consider that aspect of his background. The trial court, however, stated that it considered the presentence investigation report, which included the juvenile social investigation reports containing information about defendant's challenges as a youth, including his learning disabilities. Although the trial court

did not expressly mention the juvenile reports, it was not required to do so, and there is nothing in the record to overcome the presumption that when it reviewed the presentence investigation report it also considered the included juvenile reports. See *People v. Flores*, 404 Ill. App. 3d 155, 158 (2010).

¶ 26 Finally, defendant points to his ability to obtain a GED in the face of his learning disabilities. Although such an effort by defendant is commendable, it is merely an early step on the path to rehabilitation. The trial court considered it as mitigating evidence. It is not so significant, however, that it shows an abuse of discretion by the trial court in not giving it more weight.

¶ 27 Defendant's arguments do not demonstrate an abuse of discretion, and hence do not warrant a sentence reduction under Rule 615(b)(4). The record shows that the trial court considered all of the mitigating and aggravating evidence when it fashioned a sentence within the statutory range. The court obviously gave some weight to the mitigating evidence, as it arrived at a sentence eight years below the midpoint of the statutory range. There is no indication in the record that the sentence varied greatly from the spirit and purpose of the law or was manifestly disproportionate to the nature of the offense. See *Alexander*, 239 Ill. 2d at 212. Thus, we hold that the trial court properly exercised its discretion in sentencing defendant to 47 years' imprisonment.

¶ 28 III. CONCLUSION

¶ 29 For the foregoing reasons, we affirm the judgment of the circuit court of Lake County.

¶ 30 Affirmed.